

Florida **Government in the Sunshine** ***A Citizen's Guide***

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Dear Citizen,

Information about our government provides one of the cornerstones of our democracy. The right to access this information is fundamentally important to the citizens of the state of Florida. In addition to a comprehensive set of laws guaranteeing access, Florida is one of only a handful of states to provide a constitutional right of access to government meetings and records.

We need this information in order to hold our elected officials accountable, understand their decision-making process and make decisions about where to live or how to prioritize our community's concerns.

This booklet provides an overview of the government-in-the-sunshine laws and how the laws work. There's even a sample request letter, in case you need to use one.

The Brechner Center is nationally and internationally recognized as an important resource on freedom of information issues. We are dedicated to helping people understand the state's government-in-the-sunshine laws, access to courts and the federal Freedom of Information Act (FOIA.)

The Center was established in 1986, when Joseph L. Brechner, an Orlando broadcaster and advocate of freedom of information provided more than \$1 million for the endowment.

We discuss First Amendment and FOI issues at numerous national conferences and statewide meetings each year. We produce a monthly newsletter on access and First Amendment issues in the state.

Each year, we answer about 500 questions about how FOI laws work. These questions come from journalists, public officials, media lawyers and citizens. We are also working on a number of research projects focused on access to information.

If you need more specific information about the law or about the Brechner Center, please visit our web site: **Brechner.org**. Or, call our office at (352)392-2273.

Sincerely,
Sandra F. Chance
Sandra F. Chance, J.D.
Director, Brechner Center for Freedom of Information
Associate Professor

Florida

Government in the Sunshine

A Citizen's Guide

Introduction

The public's right of access to information about their government is a fundamental constitutional right in Florida. In addition, Florida's open government laws are some of the strongest in the nation, and aside from specific and narrow exceptions, governmental bodies must keep their affairs open to the public.

Our government is based on the will of the people, and an open government is essential for a self-governing society. Therefore, citizens and the media must be able to monitor the activities of their elected representatives and their government.

Access to public meetings of governmental bodies and to governmental records provides citizens with the information they need to participate in the democratic process. An informed electorate is better able to evaluate and monitor officials' behavior — ensuring an honest, competent and responsive government.

In a democracy, the records belong to the people, not the government. The records are created by people on the public payroll, they are recorded on paper or computer disks paid for by tax money, and they are stored in public buildings.

Florida began its tradition of openness in 1909 when the Legislature passed the first Public Records Law, Chapter 119 of the Florida Statutes. The Public Records Law provides that citizens shall have virtually unlimited access to records made or received by any public agency in the course of its official business, unless specifically exempted by the Legislature. Chapter 119 mandates that custodians of these records shall permit them to be inspected and examined by any person desiring to do so, at any reasonable time. Over the years, the definition of a public record has expanded, so that not just traditional written documents are covered, but also tapes, photographs, film, sound recordings and computer records.

Thirty years ago, Florida enacted the Sunshine Law, Chapter 286 of the Florida Statutes. It established a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies.

Prior to 1990, there was a question as to whether the Sunshine Law covered the state Legislature, but in that year, the voters overwhelmingly passed a constitutional amendment providing for open meetings in the Legislative branch of the state government. In 1992, Florida voters overwhelmingly approved the Public Records and Meetings constitutional amendment. This amendment constitutionalized the right of access to government information and specifically includes the legislative, executive and judicial branches of government.

How the Laws Works

The Sunshine Law, Chapter 286, Florida Statutes, requires that government decision-making take place in public. The Sunshine Law prohibits elected officials from meeting behind closed doors to decide matters that affect the citizens they represent in the absence of a specific exemption approved by the Legislature. The basic requirements of the law are that meetings of any public decision-making body must be open to the public, reasonable notice of such meetings must be given and minutes of the meeting must be taken.



The Sunshine Law applies not only to the obvious meetings of elected bodies, but also to appointed and advisory boards. Florida courts have stated that the entire decision-making process is subject to the Sunshine Law, and not just at official meetings to vote on final decisions or actions. The statute extends to discussions and deliberations as well as to formal action taken by a public body.

Therefore, the law applies to any gathering where two or more members of a public board or commission discuss some matter on which foreseeable action will be taken by that board or commission. Public agencies may not circumvent the Sunshine Law by using an alter ego to conduct public business in secret. Anyone who carries messages about public business from one public official to another in an attempt to resolve an issue outside of the Sunshine violates the law. In addition, boards subject to the Sunshine Law must provide reasonable notice of all meetings.

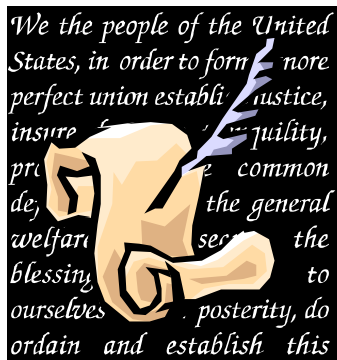
Here's how the law works. Parents have a right to watch their local school board consider changes in the elementary school curriculum. Residents have a right to attend a city council meeting to discuss a proposal to rezone property in order to build a shopping mall in their neighborhood.

Residents also can review and photocopy the school curriculum materials or the detailed, formal request for zoning approval under the Public Records Law, Chapter 119 of the Florida Statutes. This companion to the Sunshine Law requires that all government records be open for public inspection and copying unless there is a specific exemption approved by the state Legislature.

The Public Records Law allows citizens to look at reports of crime in their areas or the professional backgrounds of the people teaching their children. Citizens can evaluate how much is being spent on emergency services at the local public hospital or how much state employees are getting paid.

In addition to being able to attend government meetings and review public records, citizens may attend most judicial proceedings in Florida and review many of the documents that are filed in court proceedings. State and federal courts have ruled that criminal and civil trials and hearings generally should be open to the public, along with any documents that are filed and transcripts of those proceedings.

The Constitutional Amendment



In 1992, Florida voters overwhelmingly approved a constitutional amendment that allows citizens improved access to government records. The constitutional amendment, Article 1, Section 24, specifically includes agencies of the legislative, executive and judicial branches of government and makes it more difficult for legislators to add exemptions to the law. Under the amendment, the legislative branch was authorized to adopt rules governing legislative records. The amendment required the judicial branch to draft new rules providing access to administrative records.

In addition, the constitutional amendment provides that exemptions may be enacted only if the Legislature can prove that a public necessity exists justifying the exemption. New exemptions must be no broader than necessary to accomplish the stated purpose of the law. In November 2002, 75 percent of the voters supported Amendment Four, which amended Florida's constitutional Government in the Sunshine Amendment. Now, two-thirds of state senators and representatives, rather than just a majority, must vote to approve new exemptions to Florida's Sunshine Laws.

Open Meetings

The Sunshine Law requires that government boards and commissions meet in public when

discussing public business. The law permits citizens to observe the decision-making process from initial deliberations to the final vote. The law also requires governmental bodies to provide reasonable prior notice of their meetings and to keep minutes of the proceedings.

Which Governmental Bodies are Covered?

The Sunshine Law applies to most state, county and municipal governmental bodies. Florida courts have ruled this includes all public boards, commissions and regional agencies under the “dominion and control” of the state Legislature, whether they are elected or appointed. The Sunshine Law applies to members-elect of boards or commissions, as well.

Also, the law applies to private bodies as well, if governmental decision-making duties have been delegated to it by a body otherwise covered by the Sunshine Law. Government may not avoid the law by simply delegating its decision-making authority to another entity. When decision-making authority is delegated to staff members, staff members also become subject to the Sunshine Law when discussing these matters.

The Sunshine Law does not ordinarily apply to administrative proceedings or meetings of government staff when the function of staff members is to inform and advise the decision-making body.

Also, the law allows public bodies to meet with their attorneys in closed meetings to discuss pending litigation. The law provides specific conditions for these meetings. For example, the discussion must be confined to settlement negotiations or strategy sessions related to litigation expenditures, the session must be recorded by a certified court reporter and the transcript must be part of the public records when the litigation is concluded.

State and local governmental bodies covered by the Sunshine Law include, but are not limited to:

- County and city commissions;
- School boards;
- Planning and zoning boards;
- Appointed boards or commissions;
- Civil service boards;
- Regulatory boards, such as boards under the Department of Professional Regulation;

- University committees searching for presidents or deans;
- Private organizations providing services to public agencies; and
- Economic development boards.

Florida courts have ruled that most advisory boards — even those whose powers are limited to making recommendations to a public agency and that possess no decision-making authority — are still subject to the Sunshine Law. Courts have ruled that it is the type of action performed by the board or committee, and not its make-up, that determines whether an advisory committee is subject to the law.

The following types of advisory committees have been found by Florida courts to be subject to the Sunshine Law:

- Community advisory committees;
- Architectural review committees of a homeowner's association;
- A public hospital advisory board;
- A criminal justice commission created by county ordinance to make recommendations about criminal justice issues;
- A municipal planning commission;
- A committee appointed by a mayor to recommend legislation; and
- An ad hoc committee appointed to investigate charges against a local police chief.

Advisory committees that are established solely for the purpose of fact-finding and reporting to public bodies are exempt from the Sunshine Law.

In addition, the Sunshine Law does not apply to federal agencies within the state. In 1976, however, Congress passed the federal Sunshine Act, which required about 60 federal agencies to meet in public. The act generally applies to agencies subject to the Freedom of Information Act, discussed later.

Does the Sunshine Law Apply to the Governor and Cabinet?

State lawmakers have no power to require the governor or Cabinet members to meet in public when they are exercising their constitutional administrative duties or acting as a policy-making board created by the Legislature, such as the State Board of Education. For instance, the governor's deliberations with Cabinet members about whether to grant a pardon or clemency are not covered by the Sunshine Law because they involve constitutional duties, not statutory duties.

What Legislative Meetings are Covered?

The Sunshine Law does not specifically cover the Legislature. However, the Sunshine Amendment approved by voters in 1992 specifically includes the Legislature and states that “all meetings of the Legislature shall be open and noticed.”

Another constitutional amendment, approved by voters in 1990, requires legislators to adopt procedural rules ensuring that meetings of committees, subcommittees and joint-conference committees are open and the public is notified. Following the Sept. 11 terrorists attacks, the Florida Senate passed new rules that allow secret meetings to discuss terrorism prevention.

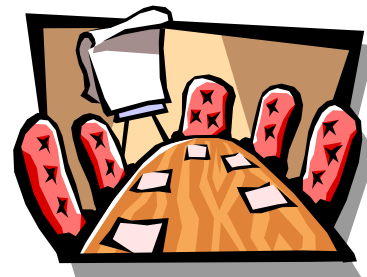
The constitutionally required rules also must provide that informal, pre-arranged meetings of three or more legislators, or meetings involving legislative leaders and the governor, be open where formal action is taken or agreed to be taken later. The amendment does not require notice of these informal meetings.

Legislators may adopt rules controlling admission to the floor of each chamber and providing for closure of committee meetings in limited circumstances.

Are Private Organizations Covered?

The Sunshine Law does not usually cover private organizations, but there are exceptions. If a governmental body delegates its functions to a private organization, its actions regarding the delegated duties are subject to the Sunshine Law.

Private organizations that play an integral part in a public body's decision-making process by acting in an advisory capacity must comply with the Sunshine Law. For example, if a county commission requests that a private, non-profit corporation hold a workshop to gather information relating to land development regulations and make recommendations, the workshop must be open to the public.



If private organizations invite members of a public board or commission, these meetings should be open to the public if public business is discussed.

It is important to note that public funding alone does not bring the private body under the requirements of the Sunshine Law. For example, a private hospital that receives Medicare or Medicaid funds would not be subject to the Sunshine Law for that reason alone, but one governed by a legislatively-created body would be.

A private corporation that is paid to perform services for a public agency, but is not delegated any governmental or legislative duties, would similarly not be subject to the Sunshine Law.

What Activities Are Covered?

The Sunshine Law covers “meetings” of public boards and commissions. That includes deliberations, discussions and workshops, as well as formal actions. Florida courts have ruled that whenever two or more members of a governmental body discuss matters on which foreseeable action could be taken by the body, that “meeting” is subject to the Sunshine Law. This would apply even if two members of a commission were having a casual dinner, and public business came up in the course of conversation.

There is no requirement that a quorum or majority be present for a discussion to be subject to the Sunshine Law.

Every step in the decision-making process, however preliminary, constitutes an action subject to the law. For example, board members may not use written memos, intermediaries or staff members to avoid a public meeting.

Examples of activities covered by the law include:

- Telephone conference calls;
- Deliberations of a regional planning council;
- Public board or commission meetings discussing personnel matters;
- Meetings to discuss confidential material;
- Workshop or conference sessions;
- Lunch meetings prior to formal meetings;
- Meetings at which personnel matters are discussed;
- Selection and screening committees;
- Purchasing or bid evaluation committees; and
- Negotiations by a public board or commission for the sale or purchase of property.

Exemptions

The Florida Supreme Court has ruled that the Sunshine Law has no exemptions except those provided by statute. The Government-in-the-Sunshine Amendment, Section 24 of the Florida Constitution, embodies this principle and limits exemptions to those listed in the Constitution and the Sunshine Law. The constitutional amendment requires the Legislature to specify the public necessity justifying a new exemption and requires new exemptions not be any broader than necessary to accomplish the stated purpose of the law.

The Legislature has enacted more than 200 exemptions to the Sunshine Law, passing new exemptions almost every year.

A few examples include:

- Meetings between city councils and city attorneys when discussing pending litigation involving the city;
- Advisory committees involved solely in fact-finding activities;
- Proceedings of peer review panels, committees and governing bodies of public hospitals or surgical centers relating to disciplinary actions;
- Certain meetings of Judicial Nominating Commissions and Judicial Qualifications Commissions;
- Some deliberations of the Public Employees Relations Commission;
- Certain meetings of the State Lottery Commission;
- Strategy discussions between a governmental body and its chief executive officer prior to collective bargaining negotiations; and
- Grand jury proceedings.

How Should Government Provide Access?

The public must be notified about public meetings. Notice should include the meeting's time, place and the agenda, if available. The notice should be prominently displayed in the agency's offices or meeting area.

The type of notice depends upon the facts of the situation and the board involved. The goal of the public official should always be to provide adequate notice to enable any interested citizen to find out about the meeting.

In some instances, posting of the notice in a public area may suffice. In others, publication in a local newspaper may be necessary.



Additional notice may be given in any reasonable fashion, including telephone calls to interested persons, press releases sent to local news media or advertisements placed in the media. Because methods of publishing vary widely among jurisdictions, persons interested in attending a government meeting should check with a government body to determine how it provides notice.

Emergency sessions should be announced through the most appropriate and effective channels under the circumstances. The public should have at least 24 hours notice of emergency meetings. The Sunshine Law does not specify where a public meeting may be held, but it does prohibit facilities that discriminate on the basis of sex, age, race, creed, color, origin or economic status, or which unreasonably restrict public access. Private buildings, even if open to the public, should be used only as a last resort. The goal, as always, should be maximum public attendance at the meeting.

Also, boards and commissions generally must meet at or near their headquarters, or within their jurisdiction. For example, a Florida court ruled that a local board attending an out-of-town conference could not meet at the conference site simply because it was convenient for the board.

Meetings of public boards or commissions must be open to the public at all time. If, at any time, the proceedings become covert, secret or outside the public's ability to see or hear what is going on, than that portion of the meeting violates the law.

While bodies may institute reasonable rules to ensure orderly conduct at meetings, they should take reasonable steps to ensure that the facility will accommodate the anticipated turnout. Attendance at the meeting cannot be restricted, and the public body cannot prohibit tape recorders or cameras unless they are disruptive.

Written minutes must be kept of all meetings and those minutes must be open for public inspection. Voting must be in the open and all members are required to cast votes unless they abstain because of a stated conflict of interest. The Sunshine Law does not allow the use of "secret ballots."

What if a Meeting is Improperly Closed?

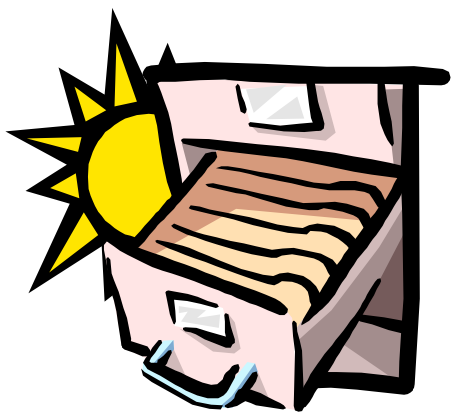
If it is known in advance that a meeting will be closed in violation of the Sunshine Law, the chairperson of the public body or its attorney should be notified. If time permits, the notice should be in writing. The written request should inform the public body of its duties under the Sunshine Law and should ask the public body to cite the exemption it is relying upon to close the meeting. The written notice may be sent by certified mail to ensure proof of receipt by the public body.

If officials continue to refuse to open a meeting after receiving a formal request, or if closure is expected for other reasons, a circuit court may issue an injunction to prevent the closed meeting. Citizens may contact the State Attorney's office in the appropriate judicial circuit or a private attorney to request help with securing an injunction or other legal action.

If a court finds that a public board or commission failed to comply with the Sunshine Law, its members could be subject to criminal or civil penalties and may even be removed from office. Florida courts may also invalidate, or declare null and void, any votes or other actions taken by the public body in violation of the law.

If you seek entry to a meeting at which official matters are to be considered and you are prohibited from entry, you should inform the presiding official that: **“Florida Statute 286.011, the Government-in-the-Sunshine Law, requires that all meetings of state or local governmental boards or commissions be open to the public unless there is a specific statutory exemption. If I am ordered to leave (or forbidden to enter) this meeting, I ask that you advise me of the statutory authority for your action. Otherwise, I must insist on my right to attend this meeting.”**

The Sunshine Law provides for recovery of attorney's fees from governmental bodies if a court finds a violation. The law also permits a governmental body to recover attorney's fees from an individual if a court rules a suit was frivolous or filed in bad faith.



Open Records

The Florida Public Records Law, Chapter 119, Florida Statutes, gives the public access to public records, defined as “all documents, papers, letters, maps, books, tapes,

photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission,” made or received in connection with government agency business. The Florida Supreme Court has interpreted this definition to encompass all material prepared to “perpetuate, communicate or formalize knowledge.”

All records, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.

When officials circulate material for review, comment or information, the material is a public record. Records of advisory bodies, private organizations or independent contractors acting as agents of government agencies are public unless covered by a specific exemption.

Access to Computerized Records

As technology has changed the means by which agencies communicate, manage and store information, many public records are kept only in computer form.

In 1995, Florida amended its definition of a public record to specifically include computer records and data processing software.

The statute says that automation of public records must not erode the public’s right of access.

Accordingly, computerized public records are governed by the same rule as paper documents. Agencies must provide a copy of public records in the medium requested if the agency maintains the record in that medium. However, an agency is not required to create a new record to meet a requester’s particular needs.

Agencies are responsible for ensuring reasonable access to records electronically maintained and should set up their databases to comply with the Public Records Law.

E-mail messages made or received in connection with official business are public records.

Examples of Public Records

- Most portions of arrest and crime reports;
- E-mail messages made or received by agency employees in connection with official business;
- Most personnel records of government employees, including applications for state or local employment;
- Agency documents circulated for review, comment or information;
- Private company records connected with governmental services where private business acts on behalf of government ;
- Salaries and expense reports of most government employees;
- Written communications between a government agency and its attorney, except information prepared for a pending suit;
- Court orders or judgments dealing with public hazard;
- Tape recordings of incoming calls to a public agency; and
- County and municipal budgets.



What is Exempt from the Public Records Law?

The Florida Supreme Court has ruled that government agencies must provide access to public records unless the Legislature has specifically exempted them from disclosure. An agency claiming an exemption from disclosure bears the burden of proving a record is exempt by law. Before denying access, a public records custodian must specifically state — in writing if requested — which part of the law exempts a record.

There are more than 550 separate records exempted from the Public Records Law.

Examples of them include:

- Medical, birth and adoption records;
- Autopsy photographs, and video and audio recordings of an autopsy;
- Social security numbers contained in official public records;
- Nursing home adverse incident reports, and risk-management records and meetings;
- Personal identifying and financial information contained in the Department of Health's records;
- Investigative and criminal intelligence records of law enforcement agencies that are related to active investigations;
- Law enforcement records identifying sexual abuse victims or confidential informants;

- Home addresses and phone numbers of Department of Children & Family Services investigators, law enforcement officers, state attorneys, judges, firefighters, code enforcement officers, human resource officers and lottery winners;
- Student educational records;
- Reports of diseases of “public health significance” to the state Department of Children & Family Services;
- Information “necessary to secure the integrity” of the Lottery;
- Negotiation records of purchases of real property by state and local agencies, such as appraisals, offers and counteroffers, until a deal is final or will be considered within 30 days,
- Most tax information filed with the Department of Revenue;
- Security system plans, including building plans, blueprints, schematic drawings and diagrams depicting the internal layout and structural elements of any state owned or operated building, arena, stadium, water treatment facility or other structure; and
- Driver license and motor vehicle records of drivers who “opt” to block personal information.

Juvenile offender records are generally confidential and exempt from the Public Records Law. However, if the juvenile is arrested for a crime that would be a felony if committed by an adult or if the juvenile has committed three or more “adult” misdemeanors, the records are not exempt.

If a federal statute requires a record to be closed and the state is clearly subject to the provisions of that statute, the state must keep the records confidential. However, a Florida court ruled that tenant records of a public housing authority are not exempt from the Public Records Law, despite the Federal Privacy Act.

Which Government Bodies Are Subject to the Public Records Law?

All units of state, county and local government are subject to the Public Records Law, as are advisory bodies, private organizations or independent contractors acting on behalf of any public agency. Thus, any publicly created advisory board would be an agency subject to the law unless a statutory exemption exists. When a private corporation not otherwise connected with government provides services to a governmental body, the key question is whether the private organization is acting on behalf of a public agency.

Neither public funding nor a government contract automatically make the private organization subject to the law. The Florida Supreme Court developed a “totality of factors” approach as a guide for evaluating whether a private entity is subject to the Public Records Law.

Generally, if the private organization is involved in the decision-making process, it becomes an “agency” for the purposes of the Public Records Law. In addition, when a private organization enters negotiations with a public agency, records of those negotiations are public records.

For example, the Chicago White Sox professional baseball team and the city of St. Petersburg were found to have violated the Public Records Law by denying access to draft lease documents generated during the negotiations.

How To Get Access to Public Records

The Florida Public Records Law states that any person can inspect and copy public records. An individual does not need to state a purpose or special interest to obtain access to a record and does not need to present identification.

The first step toward seeing a record is identifying the agency holding it and the person within that agency who is the records custodian. A custodian is the person who either supervises or has control over the document, or has legal responsibility for its care, keeping or guardianship. Citizens can call or write the agency for this information.

The request for a public record should be as specific as possible. Although a verbal request is sufficient, a written request is often more effective. A request for a record should include the subject matter, location, date, agency in charge and the name or identification of the file, if known. Copies of all correspondence should be kept.

When a portion of the material requested is exempt from disclosure, a records custodian must provide the non-exempt material. For example, even though the name of the victim of a sexual assault is exempt from disclosure, the police report itself is not exempt. Once the identifying information is removed, the report must be released.

Remedies

If you are refused access to public records you should cite Chapter 119 of Florida Law, which states: **“It is the policy of this state that all state, county and municipal records shall at all times be open for a personal inspection by any person. Public records are defined as ‘all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received...in connection with the transaction of official business by any agency.’ Section 119.10 provides that: Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree...”**

If a government agency violates the Public Records Law, it harms all citizens of the state of Florida. Therefore, any citizen of the state who reasonably believes that there has been a violation may seek an order from the circuit court to force disclosure. Penalties include fines, injunctive relief and, in extreme cases, incarceration of offenders.

The cost of bringing a justifiable suit against a government entity should not deter citizens from enforcing the law. Even though legal fees may become costly, if a citizen brings a suit under the Sunshine Law or the Public Records Law and the court finds that there was a violation, the person who filed the lawsuit is entitled to recover reasonable attorney’s fees from the agency. However, if the court finds that the suit was filed in bad faith, or on frivolous grounds, the agency may recover reasonable attorney’s fees from the person filing the suit.

Knowingly withholding public records can cause more than financial trouble for public officials who mishandle the public trust. In 1999, an Escambia County School Board member spent seven days in jail after being found guilty of violating the Public Records Law.

Fees

If you want a copy of a record, the records custodian may charge only the actual cost of duplication. The law allows the records custodian to charge higher fees for certain records and, when responding to a request, requires extensive assistance.

For example, if a request requires extensive use of information technology resources or extensive clerical or supervisory assistance, or both, an agency may charge a reasonable service charge based on the actual cost incurred.

The Freedom of Information Act (FOIA)

Records of federal agencies in Florida are not covered by the Public Records Law. In 1966, Congress passed the Freedom of Information Act (FOIA) to increase public access to federal government documents. The FOIA generally applies to documents that serve the function of public records and can be reproduced. The FOIA does not apply to Congress, the White House, the federal courts or independent regulatory agencies.



Persons seeking records under the federal Freedom of Information Act should contact the agency in possession of the record to get the name of the agency information officer.

If this informal contact is not successful, a formal written request should be filed (requests can be patterned on the request letter (illustrated in Appendix A.) Each agency is required to publish in the Federal Register a description of its structure and a list of people to contact for an inquiry under the Act.

Once a formal request is made, the federal agency must release the document or advise the requester that it falls into one of the nine exempt categories. They are: national security, agency rules and practices, specific statutory exemptions, confidential business information, internal memoranda, personnel or medical files, law enforcement investigations, banking reports and information about oil and gas wells.

The Electronic Freedom of Information Act Amendments of 1996 (E-FOIA,) guarantees that records maintained in computer form are as accessible as paper records under FOIA. Among other things, the law requires agencies make regulations, opinions, policy statements and similar information available on-line, on CD-ROM or computer disc. It also requires agencies to provide information in the format requested, whenever possible.

In addition to making electronic records accessible, the 1996 law amends other portions of the FOIA. For example, an important section of the new law allows reporters who can demonstrate a “compelling need” for the federal records they request under FOIA expedited access—a faster processing of their requests than that of rank and file requesters.

Agencies are now required to respond faster in two situations. First, when failure to obtain records can pose an imminent threat to an individual’s life or physical safety.

Second, and of particular interest to reporters, when “a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged federal government activity.” According to the new law, expedited access requests must be processed within 10 days. In addition, the new law changes the time limit for other requests from 10 to 20 days.

However, if you file an E-FOIA request, you should know that it is not unusual to wait for months or even years for a response. Agencies say they do the best they can with their resources. For example, the FBI spends \$21 million a year and employs 300 people to process FOIA requests, which it receives at the rate of one per minute. According to one estimate, the government receives about 600,000 requests a year and spends an average of \$500 to respond to each request.

Some agencies meet the time limits to respond to requests. Most do not. It is highly unlikely that response times will change much, even with the passage of the new law, so plan accordingly.

Appeals can be directed to an agency head and subsequently to a federal court. Unfortunately, information can seldom be obtained for free under the Act. Members of the press may obtain a waiver of all or at least part of the fees. Waivers are also available if the information will serve a public interest, as opposed to a commercial interest.

Open Courts

The public’s right to attend government meetings and view public records is based on statutes enacted by legislative bodies. The right to attend judicial proceedings and view judicial records generally is controlled by courts based on traditional practices, court rules and constitutional law.

The U.S. Supreme Court has ruled the public has a qualified right of access to criminal trials, jury selection and pretrial hearings. The Supreme Court has not yet formally extended this right to civil proceedings, but traditionally the public is allowed to attend. Many lower courts have ruled that civil proceedings are presumptively open.

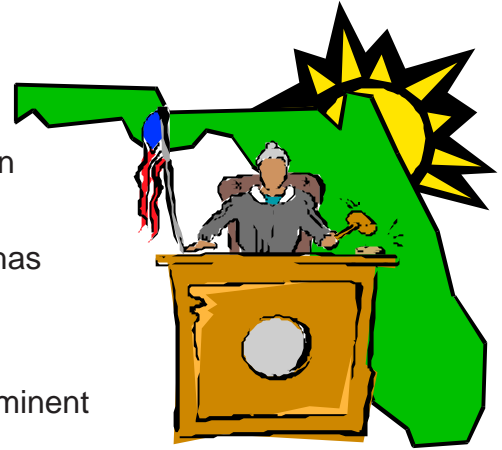
If a proceeding historically has been open, the U.S. Supreme Court has ruled judges can close it only if:

- Evidence shows access will abridge a constitutional right, such as the defendant's right to a fair trial;
- Alternatives to closure would not protect the right jeopardized by access; and
- Closure is limited in time and scope only to what is necessary to protect the right.

Judges also control the conduct of spectators in courtrooms, the use of cameras and recording equipment.

Florida Courts

The Florida Supreme Court has ruled that criminal and civil proceedings in state courts generally should be open to the public. Judges, however, may close courtrooms or seal certain judicial records if the party seeking closure has overcome the presumption of openness by proving that:



- Closure is necessary to prevent a serious and imminent threat to the administration of justice;
- No less restrictive measures are available; and
- Closure would be effective to protect the defendant's rights without being broader than necessary.

To close a civil proceeding, a judge must find that closure is necessary to

- Comply with the state's Constitution, a statute or case law;
- Protect trade secrets;
- Protect a compelling interest, such as national security, or the identification of confidential informants;
- Obtain evidence to properly determine legal issues in a case;
- Avoid substantial injury to innocent third parties, such as children in a divorce proceeding; or
- Avoid substantial injury to a party by disclosure of matters protected by common law or privacy rights.

Before ordering closure in a civil proceeding, the judge must also find that no reasonable alternative is available and then use the least restrictive closure necessary to accomplish the stated purpose.

If you oppose closure, you should notify the court immediately of your objection. You might say something like this: **“I am _____, a reporter/citizen of this community. I object to the proposed closure of this proceeding. I am not an attorney, but I understand the public has a constitutional and common law right of access to this and all other court proceedings. I believe the law requires that a hearing be held, with the press and public having an opportunity to be heard through counsel, prior to closure. I therefore request such a hearing.”**

Court decisions, procedural rules and the Florida Constitution provide for access to judicial records. Court records generally are open for inspection once they are filed with the clerk, unless specifically closed by court order or otherwise exempted.

A 1990 law prohibits a court from entering an order that conceals a public hazard or information that may help guard against injury from a public hazard. Known as the Sunshine in Litigation Act, the law enables the public to inspect judicial documents regarding public hazards, even if the parties agree to settle the litigation out of court.

Gag Orders

Judges may issue restrictive orders, often called “gag orders,” preventing parties and trial participants from talking about judicial proceedings. To issue a gag order, a judge must demonstrate that there is a substantial likelihood their statements would prejudice a criminal proceeding, that no viable alternative exists and that the order is no broader than necessary to protect the defendant’s rights.

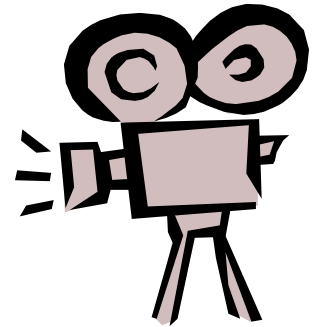
Judges may not, however, impose prior restraints that prevent members of the media from publishing information they have already obtained, unless there is an immediate threat to the administration of justice. A party seeking a prior restraint has a heavy burden of proof because there is a presumption against its constitutionality.

Cameras in Florida Courts

For more than 25 years, cameras and recording equipment have been allowed in Florida courtrooms. There are, however, rules regulating the number of television and still cameras permitted. Also, photographers must use equipment that does not produce distracting light or sound.

Cameras may not be excluded solely because they make participants nervous or self-conscious.

State judges may ban cameras from judicial proceedings only if the participant seeking the ban can prove the presence of cameras would have a “substantial effect” on a trial participant that would be “qualitatively different” from coverage by other media.



Judicial orders denying electronic or photographic recording of a judicial proceeding are reviewable directly by the Florida Supreme Court.

Camera Access to Federal Courts

Although cameras are allowed in 48 states, they are still banned from most federal courts and U.S. Supreme Court proceedings. However, the Judicial Conference of the United States, the policy-making body for the federal courts, passed a resolution that gave federal appellate judges the discretion to allow still photographs or radio or television coverage of appellate arguments.

Additional References

The Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, University of Florida, Gainesville, FL 32611, is an important resource for information about access to government and other media law issues in Florida, around the country and internationally. Call **(352) 392-2273** for expert analysis and assistance, or arrange for a speaker. Visit our web site: <http://Brechner.org>.

The Brechner Report, published by **The Brechner Center for Freedom of Information**, College of Journalism and Communications, is a monthly newsletter covering developments in media law in the state of Florida, published 12 times a year. Copies of the monthly newsletter, the Citizen's Guide to Florida Government in the Sunshine and a sample public records request letter are available on-line at the Brechner Center's web site.

Government-in-the-Sunshine Manual, published by the First Amendment Foundation, 336 E. College Avenue, Suite 103, Tallahassee, FL 32302, is prepared and updated annually by the state Attorney General's Office. To order the manual, call (850) 222-3518 or 1-800-337-3518. An electronic version of the manual is available at: <http://legal.firm.edu>.

The First Amendment Foundation, also tracks legislative initiatives impacting access and the First Amendment. A comprehensive summary of legislative activities is available at: <http://www.floridafaf.org>. The Foundation produces **The Florida Public Records Handbook**.

The **Office of the Florida Attorney General**, for information about government-in-the-sunshine issues and possible mediation assistance. The Attorney General's number is **(850) 488-9853** or visit their web site at: <http://legal.firm.edu>.

Florida Legislature's On-Line Sunshine, the official guide to the state legislature, provides links to statutes, the Constitution and the Laws of Florida, at <http://www.leg.state.fl.us>.

How to Use the Federal Freedom of Information Act, published by the FOI Service Center and sponsored by the [Reporters Committee for Freedom of the Press](http://www.rcfp.org). This is an easy-to-read guide for persons wishing to use the federal Freedom of Information Act. Visit their web site: <http://www.rcfp.org> for an online version.

A Sample Public Records Request Letter

Date
Records Custodian
Government Building
Anywhere, FL 54321

Dear Records Custodian,

Pursuant to the Florida Public Records Law, Chapter 119 of the Florida Statutes, I request access to review and photocopy: (List all records you wish to review, including any specifics such as governmental offices, public officials, issues of importance, names or dates. In this section, be as specific as possible in describing the records you want. This enables the custodian to process your request more quickly and avoids unnecessary costs associated with records searches.)

I am willing to pay all lawful and reasonable costs associated with this request. Please notify me in advance what those costs will be.

If you intend to deny this public request in whole or part, I request that you advise me in writing of the particular statutory exemption upon which you are relying, and an explanation for doing so, as required by Chapter 119 of the Florida Statutes. Additionally, if the exemption you are claiming applies to only a portion of a record, please delete the exempted section and release the remainder of the record as required by law.

In light of the nature and importance of the records requested, please make them available by (The public records law provides no definitive time limit for fulfilling records requests, but states that agencies must respond to records requests within a reasonable period of time.) If you have any questions about this request, please call me at (your number.)

Thank you in advance for processing my request.

Sincerely,

Concerned Citizen